



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA-2012-0119]

RIN 2126-AB52

Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the regulations governing the transportation of household goods to remove an obsolete requirement related to collect calls, resolve ambiguities, and reduce a regulatory burden on household goods motor carriers.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to the above docket via <http://www.regulations.gov> on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], FMCSA will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FMCSA-2012-0119 using any one of the following methods:

(1) **Federal eRulemaking Portal:** <http://www.regulations.gov>.

(2) **Fax:** 202-493-2251.

(3) **Mail:** Docket Management Facility (M-30) West Building Ground Floor
Room W12-140, U.S. Department of Transportation, 1200 New Jersey Avenue SE,
Washington, DC 20590-0001.

(4) **Hand Delivery:** Same as mail address above, between 9 a.m. and 5 p.m., e.t.,
Monday through Friday, except Federal holidays. The telephone number is 202-366-
9329.

To avoid duplication, please use only one of these methods. See the “Public
Participation and Comments” portion of the SUPPLEMENTARY INFORMATION
section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, FMCSA,
Household Goods Team Leader, Commercial Enforcement and Investigations Division at
(202) 385-2400 or by email at brodie.mack@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and
related materials. All comments received will be posted, without change, to
<http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking
(FMCSA-2012-0119), indicate the specific section of this direct final rule to which each
comment applies, and provide a reason for each suggestion or recommendation. You may

submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that the Agency can contact you if it has questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Final Rule" and insert "FMCSA-2012-0119" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA-2012-0119" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 375. This rule clarifies that certain independent delivery services are not household goods motor carriers, removes an obsolete provision requiring household goods motor carriers to post notices relating to acceptance of collect telephone calls, clarifies the Agency's requirement that re-negotiated estimates contain detailed descriptions of the goods or services that gave rise to the re-negotiation, and requires household goods motor carriers that relinquish possession of goods to permanent storage to do so in the shipper's name. If no adverse comments, or notices of intent to submit an adverse comment, are received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this rule will become effective as stated in the DATES section. In that case, approximately 30 days before the effective date, FMCSA will publish a document in the Federal Register stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if the Agency receives any adverse comments or notices of intent to submit an adverse comment, FMCSA will publish a document in the Federal Register announcing the withdrawal of all or part of this direct

final rule. If FMCSA decides to proceed with a rulemaking following receipt of any adverse comments, the Agency will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Legal Basis for the Rulemaking

The Secretary of Transportation’s (Secretary) general jurisdiction to establish regulations over transportation of property by motor carrier is found at 49 U.S.C. 13501. Household goods motor carriers are a subset of property motor carriers and are required by 49 U.S.C. 13902 to register with FMCSA as household goods motor carriers.

This rulemaking is based on the statutory provisions cited above and on the authority Congress granted to the Secretary to regulate the operations of household goods motor carriers in the ICC Termination Act of 1995 (Public Law 104-88, 109 Stat. 803, Dec. 29, 1995) and in the Household Goods Mover Oversight Enforcement and Reform Act of 2005, Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005).

The Secretary has delegated these various authorities to the FMCSA Administrator (49 CFR 1.73(a)). This rulemaking only applies to household goods motor carriers that provide for-hire transportation in interstate or foreign commerce.

IV. Discussion of the Rule

FMCSA updates the household goods motor carrier regulations at 49 CFR part 375 to eliminate an obsolete requirement, remove uncertainty, and reduce a regulatory burden on household goods motor carriers.

FMCSA amends the definition of “Household goods motor carrier” in § 375.103 to clarify that motor carriers that provide delivery services transporting furniture, appliances or other furnishings between a factory or a store and an individual’s household are not household goods motor carriers for the purposes of 49 CFR part 375. Currently, Agency regulations define a household goods carrier as a motor carrier that transports household goods and provides some or all of the following services: (1) binding and nonbinding estimates, (2) inventorying, (3) protective packing and unpacking of individual items at personal residences, and (4) loading and unloading at personal residences (49 U.S.C. 13102(12); 49 CFR 375.103). FMCSA does not currently consider delivery services that load and/or provide protective packing of household goods at a factory or store and then unload and/or unpack at an individual’s household to fall within this definition. Regardless, the Agency has received a number of requests for clarification. In addition, the Agency believes that some motor carriers providing this type of delivery service have obtained household goods operating authority registration because they mistakenly believed it was an Agency requirement. As a result, these carriers may have incurred unnecessary expenses to establish and maintain household goods operating authority. This change definitively establishes that these types of motor carriers are not household goods motor carriers, so long as they only transport household goods between a factory or retailer and an individual’s household.

Section 375.209 currently requires household goods motor carriers to establish and maintain a procedure for responding to complaints and inquiries from individual shippers. Paragraph (b) requires the procedure to include four items. FMCSA removes the third requirement which directs household goods motor carriers to include a statement of who must pay for complaint and inquiry telephone calls. This requirement was originally adopted to require household goods motor carriers to indicate whether they would accept collect calls from shippers. This reference is outdated and no longer necessary. Most motor carriers and shippers conduct business using a combination of Internet, email or mobile telephone communications that have rendered this requirement obsolete.

Section 375.403(a)(6) provides that if a shipper requests that a household goods carrier transport goods or perform services in excess of those previously identified in a binding estimate and the carrier services the shipment, the carrier has one of three options before loading the shipment: (i) reaffirm the binding estimate; (ii) negotiate a revised written binding estimate listing the additional goods and services; or (iii) convert the original estimate to a written non-binding estimate, if the shipper agrees. FMCSA amends § 375.403(a)(6)(ii) to clarify that if the parties negotiate a revised written binding estimate, the additional goods or services must be accurately listed, in detail. Although FMCSA currently interprets § 375.403(a)(6)(ii) to require a detailed listing of the additional goods or services, this change will resolve any ambiguity as to the motor carrier's obligation under this section.

Similarly, § 375.405(b)(7) provides that if a shipper requests that a household goods carrier transport goods or perform services in excess of those identified in a non-

binding estimate and the carrier services the shipment, then the carrier has one of two options before loading the shipment: (i) reaffirm the non-binding estimate or (ii) negotiate a revised written non-binding estimate listing the additional goods and services. FMCSA amends § 375.405(b)(7)(ii) to clarify that if the parties negotiate a revised non-binding estimate, the additional goods or services must be accurately listed, in detail. As it does with binding estimates, FMCSA currently interprets § 375.405(b)(7)(ii) to require a detailed listing of additional goods or services. Regardless, this change will resolve any ambiguity as to the motor carrier's obligation when it re-negotiates a non-binding estimate under this section.

FMCSA amends § 375.609 by adding a new paragraph (h) requiring that when a carrier places goods into permanent storage, the storage arrangements must be made in the individual shipper's name and the carrier must provide the shipper's contact information to the warehouse. FMCSA regulations provide that once a shipper's goods are placed in permanent storage, the motor carrier's liability ends and the individual shipper is subject to the rules, regulations and charges of the warehouseman (49 CFR 375.609(b)(4)). This change will facilitate transfer of the goods to the individual shipper from the warehouseman, after the motor carrier is no longer in possession of the goods.

V. Regulatory Analyses

A. Regulatory Planning and Review

This action does not meet the criteria for a "significant regulatory action," either as specified in Executive Order 12866 as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The estimated economic costs of the

rule do not exceed the \$100 million annual threshold nor does the Agency expect the rule to have substantial Congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget. No expenditures are required of the affected population because this rule reaffirms or clarifies existing Agency interpretations, removes uncertainty and reduces a regulatory burden.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued an NPRM prior to this action.

C. Federalism (Executive Order 13132)

A rule has federalism implications if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA analyzed this rule under E.O. 13132 and have determined that it does not have federalism implications.

D. Unfunded Mandates Reform Act of 1995

FMCSA is not required to prepare an assessment under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, et seq., evaluating a discretionary regulatory action because the Agency has not issued an NPRM prior to this action.

E. Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

F. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

G. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

H. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

I. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

J. Paperwork Reduction Act

This direct final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004 in the Federal Register (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Appendix 2, Paragraph 6(b) and 6(m) of the Order (69 FR 9702). The CE in Paragraph 6(b) applies to the editorial aspects of this rule, and the CE in Paragraph 6(m) relates to regulations implementing procedures applicable to the operations of carriers engaged in the transportation of household goods. In addition, the Agency believes this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's

general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

L. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a “significant energy action” under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

THE FINAL RULE

For the reasons stated in the preamble, FMCSA amends 49 CFR part 375 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

1. The authority citation for part 375 is revised to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

2. Amend § 375.103 to add paragraph (4) to the definition of Household goods motor carrier, to read as follows:

§ 375.103 What are the definitions of terms used in this part?

* * * *

Household goods motor carrier * * *

(4) The term does not include any motor carrier that acts as a service for the delivery of furniture, appliances, or other furnishings between a factory or a store and an individual's household.

* * * *

3. Amend § 375.209 by removing paragraph (b)(3) and redesignating paragraph (b)(4) as (b)(3).

4. Amend § 375.403 by revising paragraph (a)(6)(ii) to read as follows:

§ 375.403 How must I provide a binding estimate?

(a) * * *

(6) * * *

(ii) Negotiate a revised written binding estimate accurately listing, in detail, the additional household goods or services.

* * * *

5. Amend § 375.405 by revising paragraph (b)(7)(ii) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

* * * * *

(b) * * *

(7) * * *

(ii) Negotiate a revised written non-binding estimate accurately listing, in detail, the additional household goods or services.

* * * * *

6. Amend § 375.609 by adding new paragraph (h) to read as follows:

§ 375.609 What must I do for shippers who store household goods in transit?

* * * * *

(h) When you place household goods in permanent storage, you must place the household goods in the name of the individual shipper and provide contact information for the shipper in the form of a telephone number, mailing address and/or email address.

Issued on: June 14, 2012

Anne S. Ferro
Administrator, FMCSA

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